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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

USROF III LEGAL TITLE TRUST 2015-1,  
BY U.S. BANK NATIONAL ASSOCIATION,  
AS LEGAL TITLE TRUSTEE,

Plaintiff,

vs.

TBD, LLC, a Nevada Limited-Liability  
Company; TBR I, LLC, a Nevada Limited-  
Liability Company; AIRMOTIVE  
INVESTMENTS, LLC, a Nevada Limited-  
Liability Company; HIGHLAND RANCH  
HOMEOWNERS ASSOCIATION, a Nevada  
Non-Profit Corporation; KERN &  
ASSOCIATES, LTD., a Nevada Corporation,

Defendants.

Case No.: 2:17-cv-02083-RFP-PAL

**STIPULATION AND ORDER FOR  
DISMISSAL WITHOUT PREJUDICE OF  
GAYLE A. KERN, LTD., dba KERN &  
ASSOCIATES, LTD.**

Plaintiff, USROF III Legal Title Trust 2015-1, by U.S. Bank National Association, as Legal Title Trustee (hereinafter “U.S. Bank” or “Plaintiff”), by and through its attorneys of record, Dana Jonathon Nitz, Esq., Paterno C. Jurani, Esq., and Natalie C. Lehman, Esq., of the law firm of Wright, Finlay & Zak, LLP, and Defendant Gayle A. Kern, Ltd., dba Kern & Associates, Ltd. (“K&A,” and collectively with “U.S. Bank” as the “Parties”), by and through its attorneys of record, Karen M. Ayarbe, Esq. of Kern & Associates, Ltd. hereby stipulate and

1 agree as follows:

2 WHEREAS the above-captioned action concerns Defendant, Highland Ranch  
3 Homeowners Association's (the "Association") NRS Chapter 116 non-judicial foreclosure sale  
4 on or about March 19, 2013 ("HOA Sale") involving certain real property located in Washoe  
5 County, Nevada, commonly known as 6360 Zuni Court, Sun Valley, Nevada 89433, APN: 508-  
6 221-44 ("Property");

7 WHEREAS U.S. Bank filed its Complaint on August 1, 2017, alleging several causes of  
8 action against K&A in connection with the HOA Sale and the Property [ECF No. 1];

9 WHEREAS K&A has never claimed, any interest in the Property;

10 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED that the  
11 Complaint against Defendant K&A is hereby dismissed in its entirety without prejudice;

12 IT IS FURTHER STIPULATED AND AGREED that K&A shall not contest, seek  
13 reconsideration of, and/or appeal any final order, judgment or decree as to the validity and  
14 enforceability of the HOA Sale of the Property.

15 IT IS FURTHER STIPULATED AND AGREED as follows:

- 16 1. The period of time commencing of **August 1, 2017 (the "Effective Date")** and ending  
17 on the Termination Date (as that term is defined in paragraph 4 below), shall not be  
18 included in determining the applicability of any statute of limitations, laches, or any  
19 other defense based on lapse of time in any action or proceeding brought by U.S. Bank  
20 against K&A with respect to the HOA Sale, the Property, and the Complaint;
- 21 2. Except as is set forth in the preceding paragraph, nothing in this Stipulation shall  
22 diminish or affect any defense available to any Party as of the date of this Stipulation,  
23 and this Stipulation shall not be deemed to revive any claim, remedy, and/or cause of  
24 action, legal or equitable, that is or was already barred as of the Effective Date, nor shall  
25 this Stipulation create any new claim, remedy, and/or cause of action, legal or equitable,  
26 against any Party hereto. Nothing in this Stipulation, or in the circumstances that gave  
27 rise to this Stipulation shall be construed as an acknowledgement by any Party that any  
28 claim, remedy, and/or cause of action, legal or equitable, has or has not been barred, or

1 is about to be barred, by the statute of limitations, laches, or other defense based on the  
2 lapse of time;

3 3. This Stipulation shall not operate as an admission of liability by any Party. Neither this  
4 Stipulation nor any action taken pursuant to this Stipulation shall be offered or received  
5 in evidence in any action or proceeding as an admission of liability or wrongdoing by  
6 any Party;

7 4. Any Party may terminate this Stipulation on thirty (30) days' written notice to counsel  
8 for the other Parties. The Termination Date shall be the first business day following  
9 thirty (30) days after a Party has provided written Notice of Termination pursuant to this  
10 paragraph;

11 5. This Stipulation comprises the entire agreement of the Parties with respect to the tolling  
12 of any statute of limitations. This Stipulation may be modified, amended, or  
13 supplemented only by a written instrument signed by all of the Parties;

14 6. Within thirty (30) days after appearance by the Association in this matter, K&A shall  
15 provide to the Association's defense counsel of record the Association's lien, collection,  
16 and foreclosure files and/or documents with respect to the real property located at 6360  
17 Zuni Court, Sun Valley, Nevada 89433, APN: 508-221-44 which are in K&A's  
18 possession, concerning the HOA Sale for production by the Association's defense  
19 counsel in the course of discovery in accord with the Federal Rules of Civil Procedure,  
20 subject to any and all applicable objections and privileges.

21 7. Upon proper notice by U.S. Bank in accord with the Federal Rules of Civil Procedure,  
22 K&A shall make available a knowledgeable witness for deposition limited to the HOA  
23 Sale of the Property, and subject to any and all applicable objections and privileges.  
24 K&A shall be provided 30 days' notice of the deposition, and an opportunity to  
25 coordinate with U.S. Bank's counsel a mutually convenient time, date, and location of  
26 such deposition. K&A reserves all rights, defenses, and remedies relative to the notice  
27 of deposition.  
28

1 8. Except as set forth hereinabove, the Parties reserve any and all rights, privileges, and  
2 defenses under applicable law.

3 9. Nothing herein shall be construed as a waiver of the attorney client and/or work product  
4 privilege that exists among and between K&A and Highland Ranch Homeowners  
5 Association, or any other association client of K&A.

6 IT IS FURTHER STIPULATED AND AGREED that each side will bear its own  
7 attorney's fees and costs through the date of entry of the Court's Order granting this Stipulation.

8 IT IS SO STIPULATED AND AGREED.

9 WHEREFORE, the undersigned request this Court enter an Order granting the above  
10 Stipulation.

11 WRIGHT, FINLAY & ZAK, LLP

KERN & ASSOCIATES, LTD.

12 /s/ Paterno C. Jurani, Esq.

/s/ Karen M. Ayarbe, Esq.

13 Dana Jonathon Nitz, Esq.

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21 *Attorneys for Plaintiff, USROF III Legal Title*

22 *Trust 2015-1, by U.S. Bank National*

23 *Association, as Legal Title Trustee*

24 **ORDER**

25 Based on the foregoing Stipulation by and between the Parties, and good cause  
26 appearing, ***IT IS SO ORDERED*** that the Complaint against Gayle A. Kern, Ltd., dba Kern &  
27 Associates, Ltd., is ***DISMISSED*** in its entirety, without prejudice, each Party to bear its own  
28 attorney's fees and costs incurred as of the date of this Order.

Dated: November 1, 2017.

  
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RICHARD F. BOULWARE, II  
United States District Judge